

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RAPHAEL DRIVER,)
)
Petitioner,)
)
v.) No. 1:20-cv-00140-JRS-TAB
)
MARK SEVIER, et al.)
)
Respondents.)

**ENTRY DENYING MOTION TO APPOINT COUNSEL, DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS, AND DIRECTING ENTRY OF FINAL JUDGMENT**

This matter is before the Court for resolution of Raphael Driver's motion to appoint counsel and for screening of his amended petition for a writ of habeas corpus.

I. Motion to Appoint Counsel

Mr. Driver's motion to appoint counsel, dkt. [4], is **denied**. Mr. Driver is not seeking relief from a death sentence, and this matter will not proceed to an evidentiary hearing, so Mr. Driver is not entitled to assistance from counsel. *See 18 U.S.C. § 3599(a)(2); McFarland v. Scott, 512 U.S. 849, 855 (1994); Rule 8(c) of the Rules Governing Section 2254 Cases.* Therefore, whether to appoint counsel is purely a discretionary matter. *See 18 U.S.C. § 3006A(a)(2)(B) (“Whenever . . . the court determines that the interests of justice so require, representation may be provided for any financially eligible person who . . . is seeking relief under section 2241, 2254, or 2255 of title 28.”); see also Winsett v. Washington, 130 F.3d 269, 281 (7th Cir. 1997); Pruitt v. Mote, 503 F.3d 647, 654 (7th Cir. 2007).* Whereas this matter must be dismissed as a basic matter of jurisdiction, appointing counsel is not in the interest of justice.

II. Screening and Dismissal of Petition

On January 15, 2020, the Court ordered Raphael Driver to show cause why his petition for a writ of habeas corpus should not be dismissed for lack of jurisdiction. Dkt. 3. Mr. Driver's amended petition seeks relief from a prison disciplinary conviction and states that the only sanctions assessed against him included six months in disciplinary restrictive housing and 45 days' lost phone and commissary privileges. Dkt. 12 at 1. These sanctions did not deprive Mr. Driver of earned credit time or demote him in credit-earning class and therefore did not affect his "custody" for purposes of 28 U.S.C. § 2254. *See* dkt. 3.

In response to the Court's show-cause order, Mr. Driver asserts that he was later denied parole and placed in department-wide segregation, which deprives him of numerous liberties afforded to other prisoners. *See* dkt. 10. However, neither of these events deprived Mr. Driver of earned credit time or demoted him to a lower credit-earning class. Moreover, the fact that these events occurred *after* Mr. Driver's disciplinary conviction does not make them *sanctions of* the disciplinary conviction that allows him to challenge the conviction through a habeas petition.

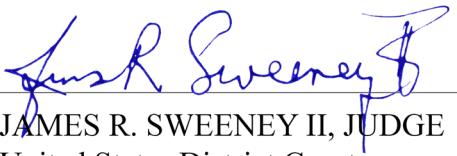
In the end, Mr. Driver's petition for a writ of habeas corpus does not raise an issue affecting his custody within the meaning of 28 U.S.C. § 2254. "[I]t plainly appears from" his petition and his response to the show-cause order "that [Mr. Driver] is not entitled to relief in the district court." *Rules Governing Section 2254 Cases in the United States District Courts*, § 4. Rule 4 requires the Court to "dismiss the petition and direct the clerk to notify the petitioner." *Id.* The action is **summarily dismissed** pursuant to Rule 4 for **lack of jurisdiction**. Judgment consistent with this Entry shall now issue.

III. Conclusion

Mr. Driver's motion to appoint counsel, dkt. [4], is **denied**. The action is **dismissed** pursuant to Rule 4 of the *Rules Governing Section 2254 Cases in the United States District Courts* for **lack of jurisdiction**. Final judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 3/9/2020



JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

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